IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12372 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AARIF MOHD. HAFIZ MALEK

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12372 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 21/05/2003

ORAL JUDGEMENT

The petitioner-detenu Aarif Mohd. Hafiz Malek,

in this petition, has challenged the order of his detention dated 20.11.2002 passed by the Commissioner of Police, Surat City, respondent No.2 herein, under the provisions of Section 3(2) of the Gujarat Anti Social Activities Act, 1985 (in short, 'the PASA Act').

In the grounds of detention of the even date supplied to the petitioner, the detaining authority has placed reliance on one Prohibition case registered against the petitioner being Prohibition C.R.No.2499 of 2002 which is pending trial. The detaining authority has, over and above the said case, has also placed reliance on two alleged incidents having taken place on 28.9.2002 and 20.10.2002 wherein the petitioner is involved in beating the witnesses for not providing vehicle for transportation and informing the police about the activities of the petitioner. According to the witnesses, even tempo of the life was disturbed and the people started running helter skelter. The identify of those witnesses has not been disclosed by claiming privilege under Section 9(2) of the PASA Act.

Considering the aforesaid material, the detaining authority has recorded a finding that the petitioner is a 'Bootlegger' within the meaning of Section 2(b) of the PASA Act and therefore with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention of the petitioner is necessary and hence the order of detention has been passed.

Since the petition is capable of being disposed of on the contention, namely, that the detaining authority having become functus-officio, has rejected the representation of the petitioner, no other contentions are required to be gone into though urged on behalf of the petitioner. Against the order of detention dated 20.11.2002 as approved by the State Government on 27.11.2002, the petitioner made a representation to the detaining authority on 27.11.2002 and the same was received by the detaining authority on 28.11.2002. Learned Counsel for the petitioner has placed on record the reply sent by the Police Commissioner, Surat City, dated 29.11.2002 wherein the detaining authority has replied that the representation dated 27.11.2002 submitted by the Advocate on behalf of the detenu is rejected after careful reading. It is further replied that since the detenu has admitted that he purchased the Rickshaw from one Salman Shaikh, the statement of said Salman Shaikh is not necessary. Further, the statement of the witnesses during the police raid was recorded,

copy whereof is given to the petitioner, it is not necessary to supply the other documents and that a legible copy of page 10 is sent to the detenu. Perusing the said reply, it is clear that the Police Commissioner has in fact rejected the said representation even though he has become functus-officio.

The Apex Court in the case of Navalshankar Ishwarlal Dave and anr. v. State of Gujarat and ors., reported in AIR 1994 SC 1496 has ruled that the authorised officer has no express power or general power under Section 21 of the General Clauses Act to revoke or rescind or modify the order of detention.

Even after rejecting the representation of the petitioner, the detaining authority has forwarded the representation to the State Government on 29.11.2002 and the State Government rejected it on 4.12.2002. Learned Counsel for the petitioner submits that the State Government has not explained the delay from 29.11.2002 to 4.12.2002 in considering the representation and therefore, the order of detention vitiates. To substantiate the said contention, he has placed reliance on a decision of the Division Bench of this Court rendered in the case of Urmilaben Navnitlal Gandhi v. The Commissioner of Police, Surat City and ors., reported in 1994(2) G.L.H. (U.J.) 10. In that case, the detaining authority received the representation on 14th October 1992 and rejected the same on 15th October 1993. The Office however, forwarded it to the State Government on 19th/21st October 1993 which was received on 26th October 1993 and came to be rejected by the State Government on 27th October 1993. The delay of five days, i.e. from 16th October 1993 to 21st October 1993 in forwarding the representation has not been explained by the respondents in any manner except that one holiday intervened. This Court observed that the office of the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merits. Applying the ratio in Harish Pahwa v. State of Uttar Pradesh, reported in AIR 1981 SC 1126, wherein similar delay was held to be unreasonable, vitiating the continued detention of the detenu, the delay of five days on the part of the office of the Commissioner of Police, Surat City, in forwarding the representation against the detention of the detenu was thus unreasonable and not properly explained, vitiating the continued detention of the detenu.

Applying the ratio of the above decision, in the present case also, there is a delay of five days, i.e.

from 29.11.2002 to 4.12.2002 in forwarding the representation, which has not been explained by the respondents. In this view of the matter, I am of the opinion that the aforesaid delay being unreasonable, vitiating the continued detention of the detenu and the delay of five days on the part of the office of the Commissioner of Police, Surat City in forwarding the representation against the detention of the detenu is therefore, unreasonable and not properly explained vitiating the continued detention of the detenu and therefore, the petition deserves to be allowed.

In the result, the petition is allowed. The impugned order of detention dated 20.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.